

EXHIBIT C

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 705

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - -X

4 IN RE: PHARMACEUTICAL : MDL NO. 1456

5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

6 PRICE LITIGATION : 01-CV-12257-PBS

7 - - - - -X

8 THIS DOCUMENT RELATES TO: :

9 U.S. ex rel. Ven-a-Care of : Hon. Patti B. Saris

10 the Florida Keys, Inc. :

11 v. :

12 Dey, Inc., et al. :

13 No. 05-11084-PBS :

14 - - - - -X

15

16 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

17

18 CONTINUED DEPOSITION OF T. MARK JONES

19 Washington, D.C.

20 Monday, December 8, 2008

21 VOLUME III

22

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 706

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - -x

4 IN RE: PHARMACEUTICAL : MDL NO. 1456

5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

6 PRICE LITIGATION : 01-CV-12257-PBS

7 - - - - -x

8 THIS DOCUMENT RELATES TO: : Judge Patti B. Saris

9 United States of America ex :

10 rel. Ven-A-Care of the :

11 Florida Keys, Inc., et al. :

12 v. Boehringer Ingelheim :

13 Corporation, et al., Civil :

14 Action No. 07-10248-PBS :

15 - - - - -x

16

17

18

19

20

21 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

22

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 707

1 IN THE COURT OF COMMON PLEAS

2 FIFTH JUDICIAL CIRCUIT

3 - - - - -x

4 STATE OF SOUTH CAROLINA :Master Caption No.

5 COUNTY OF RICHLAND :06-CP-40-4394

6 In Re: South Carolina Pharmaceutical:

7 Pricing Litigation :

8 This Matter Relates to: Sandoz, Inc.:

9 Civil Action No. 07-CP-40-0285 :

10 Civil Action No. 07-CP-40-0287 :

11 - - - - -x

12 IN THE COURT OF COMMON PLEAS

13 FIFTH JUDICIAL CIRCUIT

14 - - - - -x

15 STATE OF SOUTH CAROLINA :Master Caption No.

16 COUNTY OF RICHLAND :06-CP-40-4394

17 In Re: South Carolina Pharmaceutical:

18 Pricing Litigation :

19 This Document Relates to: :

20 Civil Action No. 07-CP-40-0280 :

21 Civil Action No. 07-CP-40-0286 :

22 - - - - -x

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 708

1 IN THE COURT OF COMMON PLEAS

2 FIFTH JUDICIAL CIRCUIT

3 - - - - -x

4 STATE OF SOUTH CAROLINA :Master Caption No.

5 COUNTY OF RICHLAND :06-CP-40-4394

6 In Re: South Carolina Pharmaceutical:

7 Pricing Litigation :

8 This Document Relates to: :

9 PAR PHARMACEUTICALS COMPANIES, INC. :

10 Civil Action No. 06-CP-40-7151 :

11 Civil Action No. 06-CP-40-7153 :

12 - - - - -x

13

14

15

16

17

18

19

20

21 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

22

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 709

1 IN THE COURT OF COMMON PLEAS

2 FIFTH JUDICIAL CIRCUIT

3 - - - - -x

4 STATE OF SOUTH CAROLINA :MASTER FILE NO.

5 COUNTY OF RICHLAND :06-CP-40-4394

6 STATE OF SOUTH CAROLINA and HENRY D. :CIVIL ACTION NO.

7 McMASTER, in his official capacity as:07-CP-40-0282

8 Attorney General for the State of :07-CP-40=0283

9 South Carolina, :

10 Plaintiff, :

11 vs. :

12 MYLAN LABORATORIES, INC., :

13 Defendant. :

14 - - - - -x

15

16

17

18

19

20

21 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

22

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 710

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT OF ANCHORAGE

3 - - - - -x

4 STATE OF ALASKA, :

5 Plaintiff, :Case No. 3AN-06-12026CI

6 vs. :

7 ALPHARMA BRANDED PRODUCTS :

8 DIVISION, INC., et al., :

9 Defendants. :

10 - - - - -x

11

12

13 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

14 STATE OF HAWAII

15 - - - - -x

16 STATE OF HAWAII, :

17 Plaintiff, :Civil No. 06-1-0720-04EEH

18 :(Complex Litigation)

19 vs. :Civil No. 07-1-1639-09EEH

20 ABBOTT LABORATORIES, INC., :(Other Civil Action)

21 et al., :

22 - - - - -x

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 711

1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2 COUNTY DEPARTMENT, CHANCERY DIVISION

3 - - - - - x

4 THE PEOPLE OF THE STATE OF :

5 ILLINOIS, :

6 Plaintiff, :

7 vs. : Case No. 05CH02474

8 ABBOTT LABORATORIES, et al., :

9 Defendants. :

10 - - - - - x

11 UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF MASSACHUSETTS

13 - - - - - -x

14 IN RE: PHARMACEUTICAL : MDL NO. 1456

15 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

16 PRICE LITIGATION : 01-CV-12257-PBS

17 THIS DOCUMENT RELATES TO: : Hon. Patti B. Saris

18 State of South Carolina v. : Magistrate Judge

19 Abbott Laboratories, Inc. : Marianne B. Bowler

20 Civil Action :

21 No.06-cv-11883-PBS :

22 - - - - - -x

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 712

1 STATE OF NEW YORK

2 SUPREME COURT COUNTY OF ERIE

3 -----) Index No. 2005-2439

4 THE COUNTY OF ERIE,) Judge John M. Curran

5 Plaintiff,)

6 v.)

7 ABBOTT LABORATORIES, INC., et al.,)

8 Defendants.)

9 -----)

10

11 STATE OF NEW YORK

12 SUPREME COURT COUNTY OF SCHENECTADY

13 -----) Index No. 2006-886

14 THE COUNTY OF SCHENECTADY,) Judge

15 Plaintiff,) Vincent J. Reilly, Jr.

16 v.)

17 ABBOTT LABORATORIES, INC., et al.,)

18 Defendants.)

19 -----)

20

21

22 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 713

1 STATE OF NEW YORK

2 SUPREME COURT COUNTY OF OSWEGO

3 -----) Index No. 2006-0697

4 THE COUNTY OF OSWEGO,) Judge

5 Plaintiff,) James W. McCarthy

6 v.)

7 ABBOTT LABORATORIES, INC., et al.,)

8 Defendants.)

9 -----)

10

11

12 UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF MASSACHUSETTS

14 - - - - -x

15 IN RE: PHARMACEUTICAL : MDL NO. 1456

16 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

17 PRICE LITIGATION : 01-CV-12257-PBS

18 THIS DOCUMENT RELATES TO: : Hon. Patti B. Saris

19 The City of New York, et al. :

20 v. :

21 Abbott Laboratories, et al. :

22 - - - - -x

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 714

1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

2 STATE OF MISSOURI

3 -----X

4 STATE OF MISSOURI, ex rel, :

5 JEREMIAH W. (JAY) NIXON, :

6 ATTORNEY GENERAL, and :

7 MISSOURI DEPARTMENT OF SOCIAL:

8 SERVICES, DIVISION OF MEDICAL:

9 SERVICES, :

10 Plaintiffs, :Case No. 054-2486

11 MYLAN LABORATORIES, INC., et :

12 al, I:

13 Defendants. :

14 -----X

15

16

17

18

19

20

21 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

22

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 715

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 2 OF THE STATE OF IDAHO
 3 IN AND FOR THE COUNTY OF ADA

4 -----x

5 STATE OF IDAHO, :

6 Plaintiff, :

7 vs. : Case No. CV OC 0701847

8 ALPHARMA USPD, INC., et al., :

9 Defendants. :

10 -----x

11

12

13 Volume III of the Videotaped Deposition of T. MARK JONES,
 14 a witness herein, called for examination by counsel for
 15 Dey, Inc. in the above-entitled matter, pursuant to
 16 notice, the witness being duly sworn by SUSAN L.
 17 CIMINELLI, a Notary Public in and for the District of
 18 Columbia, taken at the offices of Kelley Drye &
 19 Warren LLP, Washington Harbour, Suite 400, 3050 K
 20 Street, N.W., at 9:10 a.m., and the proceedings being
 21 taken down by Stenotype by SUSAN L. CIMINELLI, CRR,
 22 RPR, and transcribed under her direction.

1 A P P E A R A N C E S :

2

3 On behalf of Ven-A-Care and the Witness:

4 JIM BREEN, ESQ.

5 The Breen Law Firm

6 3350 SW 148 Avenue, Suite 110

7 Miramar, FL 33027

8 (954) 874-1635

9

10 On behalf of the United States:

11 RENEE BROOKER, ESQ.

12 U.S. Dept. of Justice - Civil Division

13 601 D Street, N.W.

14 Washington, D.C. 20012

15 (202) 616-3797

16

17 On behalf of Dey, Inc. and Mylan:

18 CLIFFORD KATZ, ESQ.

19 Kelley Drye & Warren LLP

20 101 Park Avenue

21 New York, NY 10178

22 (212) 808-7697

1 A P P E A R A N C E S : (CONTINUED)

2 On behalf of Roxane & Boehringer Ingelheim:

3 ERIC GORTNER, ESQ.

4 Kirkland & Ellis LLP

5 200 East Randolph Drive

6 Chicago, IL 60601

7 (312) 861-2285

8

9 On behalf of Schering, Schering Plough, Warrick

10 and Braun Medical:

11 JOHN P. McDONALD, ESQ.

12 Locke Lord Bissell & Liddell LLP

13 2200 Ross Avenue, Suite 2200

14 Dallas, TX 75201

15 (214) 740-8758

16

17 On behalf of GlaxoSmithKline:

18 MARK H. LYNCH, ESQ.

19 Covington & Burling LLP

20 1201 Pennsylvania Avenue, N.W.

21 Washington, D.C. 20004-2401

22 (202) 662-5544

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 718

1 A P P E A R A N C E S : (CONTINUED)

2

3 On behalf of Johnson & Johnson: (Via telephone)

4 MARK G. YOUNG, ESQ.

5 Patterson Belknap Webb & Tyler LLP

6 1133 Avenue of the Americas

7 New York, NY 10036

8 (212) 336-291

9

10

11 ALSO PRESENT:

12

13 Peggy Forrest, Paralegal

14 Dan Solomon, Videographer

15

16

17

18

19

20

21

22

1 C O N T E N T S

2

3 WITNESS: T. MARK JONES PAGE

4 Examination By Mr. Katz.....0727

5

6

7 E X H I B I T S

8 NUMBER DESCRIPTION PAGE

9 Exhibit Dey 300 - Notice of Continued

10 Deposition of T. Mark Jones..0728

11 Exhibit Dey 301 - United States First Amended

12 Complaint.....0783

13 Exhibit Dey 302 - Response of Plaintiff

14 Ven-A-Care of the Florida

15 Keys, Inc. to the Dey

16 Defendants' First Set of

17 Interrogatories.....0790

18 Exhibit Dey 303 - VAC MDL 48643.....0827

19 Exhibit Dey 304 - R1-022843-844 Contract

20 Prices.....0846

21 Exhibit Dey 305 - R1-022872 - 8/30/95 letter

22 to Fabrizi.....0854

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 720

1	E X H I B I T S (CONTINUED)		
2	NUMBER	DESCRIPTION	PAGE
3	Exhibit Dey 306 -	R1-022883-884 - 8/22/96 fax..	0867
4	Exhibit Dey 307 -	Fax VAC MDL43554-556.....	0872
5	Exhibit Dey 308 -	Fax VAC MDL43585-586.....	0876
6	Exhibit Dey 309 -	6/19/97 Fax VAC MDL71228-239.	0883
7	Exhibit Dey 310 -	Fax VAC MDL43646-650.....	0893
8	Exhibit Dey 311 -	Fax 7/26/97 VAC MDL65904-911.	0897
9	Exhibit Dey 312 -	Fax 7/26/97 VAC MDL45083-087.	0916
10	Exhibit Dey 313 -	Fax 11/10/97 VAC MDL43712-14.	0918
11	Exhibit Dey 314 -	Fax 11/24/97 VAC MDL43715-20.	0920
12	Exhibit Dey 315 -	Fax 2/3/98 VAC MDL43454-456..	0924
13	Exhibit Dey 316 -	Fax 8/13/98 VAC MDL43543-45..	0926
14	Exhibit Dey 317 -	Fax 2/22/99 R1-023971-012....	0931
15	Exhibit Dey 318 -	VAC MDL43319-320 Medicare	
16		Utilization for the	
17		inhalation drug Albuterol	
18		Sulfate 0.083%.....	0953
19	Exhibit Dey 319 -	Fax 1/18/00 R1-022889-888....	0965
20	Exhibit Dey 320 -	3/22/00 Memo to Cobo Pharmacy	
21		from Leonard Sierra	
22		R1-022890.....	0967

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 721

1	E X H I B I T S (CONTINUED)		
2	NUMBER	DESCRIPTION	PAGE
3	Exhibit Dey 321 - Innovatix document		
4		R1-024344-346.....	0969
5	Exhibit Dey 322 - Fax 5/16/01 VAC MDL43201-203.		0976
6	Exhibit Dey 323 - Fax VAC MDL43204-207.....		0980
7	Exhibit Dey 324 - Innovatix document		
8		R2-015617-618.....	0981
9	Exhibit Dey 325 - Fax 12/12/03		
10		VAC MDL80423-432.....	0984
11	Exhibit Dey 326 - 10/24/94 letter		
12		VAC MDL74719-718.....	1005
13	Exhibit Dey 327 - NAMFCU fax 4/14/98		
14		VAC MDL75939-943.....	1013
15	Exhibit Dey 328 - NAMFCU fax 4/7/98		
16		VAC MDL75930-933.....	1013
17	Exhibit Dey 329 - 5/16/99 Dey letter R1-014879.		1028
18	Exhibit Dey 330 - 8/10/99 Dey letter R1-014889.		1028
19	Exhibit Dey 331 - 3/31/00 Dey letter		
20		R1-014902-903.....	1028
21	Exhibit Dey 332 - 7/18/00 Dey letter		
22		R1-014883-884.....	1028

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 722

E X H I B I T S (CONTINUED)

NUMBER	DESCRIPTION	PAGE
Exhibit Dey 333	- 7/30/00 Letter to Chairman	
	Bliley, \ R1-022917-920.....	1037
Exhibit Dey 334	- U.S. v. Dey Second Amended	
	Complaint.....	1037
Exhibit Dey 335	- U.S. v. Dey Complaint.....	1037

P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. The time is 9:10 a.m., December 8th, 2008. This begins tape number one, Volume III of the continued videotape deposition of Mr. T. Mark Jones. Will the court reporter please swear or affirm the witness.

Whereupon,

T. MARK JONES,
was called as a witness by counsel for Defendants Dey and Mylan, and having been duly sworn by the Notary Public, was examined and testified as follows:

MR. KATZ: This is Cliff Katz,
representing Dey and Mylan Defendants.

MR. GORTNER: Eric Gortner from
Kirkland & Ellis in Chicago representing Roxane
Laboratories, Boehringer Ingelheim Corporation,
and Boehringer Ingelheim Pharmaceuticals, Inc. in

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 741

1 A. He had equal shares with us, and I
2 don't -- somehow the three of us now have equal
3 shares, but we absorbed his shares. I can't
4 remember. It would have been if we would have
5 had 300 at that point, then he had 300.

6 Q. So he would have had equal shares at
7 that point?

8 A. Right.

9 Q. With you, Lewis Cobo, and Dr. Lockwood?

10 A. John Lockwood, correct.

11 Q. And that would have been more than the
12 others at the time, Darene Cahill, John Klitenick
13 and Dr. Calleja?

14 A. It's John Calleja, Dr. Calleja and Dr.
15 Klitenick and Darene. Yes. They never had more,
16 I don't think, than 5 percent ever.

17 Q. Okay. And now I'd like for you to go
18 through the employees of Ven-A-Care now.
19 Starting in 1987.

20 A. My wife, April Jones, worked very
21 briefly, maybe for three or four months to help
22 me in the very beginning. And that would have

1 been like in '89. And then when Mr. Bentley
2 arrived, Mr. Bentley brought his wife, Mary Cobo,
3 in with him as well. But my wife left after
4 three or four months when Mr. Bentley was there.

5 So we had Mary Bentley, Zach's wife,
6 working in the office quite sometime, a few
7 years. Along with her, we had Sally Abrams, who
8 is now Sally Smith. And she basically ran the
9 office. And I think she left in 1994, maybe '95.

10 Q. Did your wife work in the office?

11 A. Yes.

12 Q. Was April Jones, Mary Cobo or Sally
13 Smith, were any of those individuals pharmacists?

14 A. No.

15 Q. Were any of them nurses or doctors?

16 A. No.

17 Q. Continue.

18 A. I believe, and I would have to talk to
19 Lewis about this, because I don't recall totally,
20 I believe we had hired a couple of pharmacists to
21 work part-time. And I can't remember their names
22 off the top of my head. One that was a female

1 named Irene, and the other was a male named
2 Craig. They both worked for Cobo Pharmacy as
3 well, so we would just hire them part-time if we
4 needed help.

5 Q. Do you know what time period they
6 worked part-time?

7 A. This was all pre-'95. I would say '90,
8 '91, '92. We didn't have very many employees.

9 Q. Well, let's stick with them for -- for
10 a little while.

11 A. Okay.

12 Q. In that time period, 1990 to 1992, when
13 you say part-time, how many hours a week are we
14 talking about?

15 A. Who are you referring to for part-time?

16 Q. Let's start with Irene.

17 A. Probably 15, you know, 12 to 15 hours.
18 If Lewis had -- couldn't cover the pharmacy, then
19 you know, we had a pharmacist in there to cover
20 it. And the same would go for Craig.

21 Q. So their function would be to fill in
22 when Lewis Cobo wasn't there?

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 744

1 A. Correct. Correct.

2 Q. All right. And Lewis Cobo was always
3 the head pharmacist for Ven-A-Care?

4 A. To the best of my recollection, yes.

5 Q. Any other employees of Ven-A-Care?

6 A. I don't think so.

7 Q. I think we have one here today, right?

8 A. Me. Of course.

9 Q. And another one? Do you have a
10 paralegal here?

11 A. No. It's a paralegal, but she is not
12 an employee of Ven-A-Care.

13 MR. BREEN: She is employed by the
14 Breen Law Firm.

15 THE WITNESS: She is employed by the
16 Breen Law Firm. Although she would be a great
17 employee.

18 MR. BREEN: Unless there is something I
19 haven't been informed of yet.

20 THE WITNESS: I'm sitting here trying
21 to remember if there was anyone else. I mean, we
22 contracted with a couple of guys like to take our

1 MR. KATZ: Right. So you can just
2 ignore the blank pages.

3 THE WITNESS: Okay. I used to be able
4 to read this about 10 years ago. I can't see
5 anymore. Okay.

6 BY MR. KATZ:

7 Q. Okay. If you take a look at the first
8 page -- or I'm sorry, the second page.

9 A. The first --

10 Q. Right. It should be, it should be
11 titled Ven-A-Care meeting with a date 9-14-95.
12 Do you see that?

13 A. I do.

14 Q. Now, this was a meeting, this is a
15 sign-in sheet for a meeting held on September
16 14th, 1995, right?

17 A. Yes.

18 Q. And the people who attended this
19 meeting included representatives of Ven-A-Care,
20 including yourself, Ven-A-Care's attorneys,
21 attorneys from the DOJ, representatives of HCFA,
22 and representatives of the OIG, right?

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 836

1 A. DOJ, HCFA, Ven-A-Care, U.S. Attorneys,
2 OIG, HCFA, yes. Yes.

3 Q. And who organized this meeting?

4 A. I believe that this -- this meeting was
5 made available to us because of Mr. Stark, Pete
6 stark. Bill Vaughn has --

7 Q. Just for the record, who was Pete
8 stark?

9 A. He was the -- he was in the Ways and
10 Means Committee. He is a Congressman.

11 Q. He is a Congressman, right?

12 A. I'm just trying to think of what his
13 title was. He was chairperson -- was he chairman
14 of Ways and Means? I think he was the chair of
15 Ways and Means.

16 Q. Now, just quickly going back to the
17 prior exhibit, Dey Exhibit 303, was that document
18 provided to Mr. Lavine in preparation for this
19 meeting?

20 A. I don't think so. I mean, it doesn't -
21 - I don't see it in this, in this PowerPoint,
22 this document.

1 Q. If you don't know --

2 A. I don't know. I mean, I don't think it
3 was because it's not in the presentation.

4 Q. Just generally speaking, can you
5 describe what was discussed at this meeting?

6 A. Well, it's like most of the meetings
7 that we did, this was one of our first ones. In
8 fact, this was one where we did these big blow-
9 ups. We took different things that we collected
10 about, you know, spreads and spread drugs, and
11 these are just photocopies of the actual board
12 itself. And we presented what we believed was
13 the fraud scheme and what we believed the issues
14 were in the marketplace to HCFA and -- well,
15 mostly, it was a HCFA meeting because OIG was
16 already aware of it, most of them anyway.

17 Q. And the OIG would already be aware of
18 that on their own, or are you contending that
19 they were aware of that from Ven-A-Care?

20 A. Ven-A-Care was already communicating
21 with the OIG.

22 Q. So would it be accurate to say that at

1 this meeting, Ven-A-Care informed the
2 representatives of the federal government at this
3 meeting that it believed that drug manufacturers'
4 AWP's greatly exceeded the actual acquisition
5 costs of pharmacies?

6 MR. BREEN: Objection. Form.

7 THE WITNESS: At this meeting, Ven-A-
8 Care made a presentation that showed examples of
9 pharmaceutical companies, you know, reporting
10 high AWP's, and we showed them the cost to Ven-A-
11 Care, which was an extremely big spread generally
12 in some drugs, and you know, just the whole fraud
13 theory, yes.

14 BY MR. KATZ:

15 Q. And when you say the whole fraud
16 theory, would it be accurate to say that in
17 addition to the examples shown, Ven-A-Care
18 informed these -- these federal government
19 representatives that it believed that there was
20 widespread fraud, as you allege, in the
21 pharmaceutical industry, and that Ven-A-Care
22 contended that AWP's greatly exceeded pharmacies'

1 actual acquisition costs?

2 MR. BREEN: Objection. Form. And I'd
3 like the question read back to the witness,
4 please.

5 THE REPORTER: "Question: And when you
6 say the whole fraud theory, would it be accurate
7 to say that in addition to the examples shown,
8 Ven-A-Care informed these -- these federal
9 government representatives that it believed that
10 there was a widespread fraud, as you allege, in
11 the pharmaceutical industry, and that Ven-A-Care
12 contended that AWP's greatly exceeded pharmacies'
13 actual acquisition costs?

14 MR. BREEN: Objection. Form.

15 THE WITNESS: I think that's a general
16 statement. I think Ven-A-Care, with its
17 knowledge in 1995, went to HCFA with particular
18 examples of what it believed represented the AWP
19 issues in the marketplace. It showed examples of
20 GlaxoSmithKline's -- or Glaxo's Zofran, which is
21 a branded drug, using a particular method of
22 providing spreads to compete in the marketplace

Jones, T. Mark - Vol. III

December 8, 2008

Washington, DC

Page 840

1 against SmithKline's Kytril.

2 And so you know, that was a really, we
3 thought, illuminating look at the difference
4 between the branded market and the generic
5 market. We showed particular generic drugs that
6 had large spreads. This last page was a page
7 that I remember doing with Zach where we took the
8 J codes and put our costs in, and calculated out
9 allowables, and what would be saved by using our
10 costs.

11 MR. BREEN: For the record, you're
12 referring to --

13 THE WITNESS: The manufacturers'
14 fraudulent AWP's.

15 MR. BREEN: And that's VAC MDL 86175?

16 THE WITNESS: Yes. And that was
17 reflective of our knowledge at that time.

18 BY MR. KATZ:

19 Q. Would it be accurate to say that the
20 fraud that Ven-A-Care was alleging was not
21 limited to the drugs and companies listed in the
22 examples, but was more widespread than that?

1 MR. BREEN: Objection. Form.

2 THE WITNESS: I think that this -- this
3 presentation represented the majority of what we
4 knew. I'm not going to tell you it covered every
5 pharmaceutical manufacturer or every drug that we
6 had. No. But these were great illuminating
7 examples.

8 BY MR. KATZ:

9 Q. Okay. But I don't think -- I don't
10 think you really answered my question. Would it
11 be accurate to say the fraud that Ven-A-Care was
12 alleging was not limited to the examples in this
13 presentation, but Ven-A-Care said that it went
14 beyond these specific examples?

15 MR. BREEN: Objection. Form.

16 THE WITNESS: Are you asking me, is
17 Ven-A-Care saying that this is just an example of
18 the fraud in the marketplace?

19 BY MR. KATZ:

20 Q. Right.

21 A. I would suspect yes, Ven-A-Care would
22 say that.

1 Q. And Ven-A-Care referred specifically to
2 Dey's drugs during this meeting, right?

3 A. I have to look and see where we --

4 Q. Well, if you look at the last page.

5 A. Well, the last page had Dey's drugs.
6 Yes.

7 Q. And did Ven-A-Care refer specifically
8 to Dey?

9 A. I don't remember or recall whether we
10 specifically read out every one of these drugs
11 and the manufacturers.

12 Q. Okay. But were some manufacturers
13 named or you don't recall?

14 A. I can't recall. I don't want to
15 testify that I -- you know, unless it was on
16 these sheets, it would be hard for me to recall
17 exactly who we talked about.

18 Q. Did Ven-A-Care also discuss WAC at this
19 meeting?

20 A. I have to look. Let me go through
21 this.

22 Q. Irrespective of whether WAC is actually

1 to confirm that?

2 MR. BREEN: I would be shocked if it
3 was anything other than a designation. At the
4 time this document was first produced, and the R1
5 on there tells me it was first produced in the
6 early Texas litigation, the early Texas qui tam
7 litigation.

8 MR. KATZ: This would have been
9 produced in the litigation against Dey in Texas,
10 right?

11 MR. BREEN: At a time when Dey was
12 aggressively taking the position that its prices
13 were highly confidential.

14 MR. KATZ: I think you're getting off
15 topic right now.

16 MR. BREEN: Okay.

17 BY MR. KATZ:

18 Q. But you didn't receive group purchasing
19 contracts and pricing lists from GPOs -- Ven-A-
20 Care didn't receive them that said attorney's
21 eyes only, right?

22 A. No.